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ECUADOR AND THE PROTOCOL OF RIO DE JANEIRO

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Ecuador y el Protocolo de Rio de Janeiro

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General Staff of the (Chilean) Army Santiago, Chile

1962

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MEMOIRS OF THE CHILEAN ARMY

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Ecuador and the Protocol of Rio de Janeiro

By Lieut. Col. Francisco Gorigoitia Herrera

#### 1. - Introduction

In order to discuss the Protocol of Rio de Janeiro it is necessary to hark back to the time of the colony.

The Republic of Ecuador now has a continental area of 260,205 sq. km. Adding to this the 7,884 sq. km of the archipelago of Galapagos the total amounts to 268,049 sq. km.

And yet, when Ecuador was (called) Real Audiencia de Quito (Royal High Court of Justice of Quito) it had an area four times as great. It then reached a total of more than 1,000,000 sq. km.

The origin of the present states on the American continent with their corresponding territorial limits, is to be found in the colonial organizations and creations, which, in their geographic make-up and their history, accord with those of the Europeans in their centuries of rule.

In law, this normal origin of the states on the American continent is known under the name of "uti possidetis" ("Lo que poseeis, continuad

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poseyendo") (what you possess, you continue possessing).

The origin of the state of Ecuador is found, therefore, in what was the ancient Kingdom of Quito, chief aboriginal nucleus of these regions, and in the 'Real Audiencia de Quito,' created by the Spaniards as a base of that chief social nucleus and possessing peculiarities, geographically and historically, which have existed from the most remote antiquity.

## II.- Territorial boundaries up to the Protocol of Rio de Janeiro

### A.- Decree of 1565.

The 'Real Audiencia de Quito' was created by Royal decree sent by Philip II, King of Spain, under date of 29 August, 1563, fixing the following boundary:

(p. 81) On the north ( $4^{\circ}$  Lat. N.): Puerto de Buenaventura - Pasto -  
- Popayan - Cali - Buga - Chapanchica - Guarchicona.

On the south ( $7^{\circ}$  Lat. S.): Paita (excluding it) - Piura -  
- Cajamarca - Chachapoyas - Moyobamba - Motilones (excluding it).

On the east: Provinces not yet pacified nor discovered. (Zone of Canela and Quijos).

On the west: 'Southern Sea' (Pacific Ocean).

As will be seen, the boundaries of the 'Real Audiencia de Quito' were completely determined from the day of its creation and it must be taken into account that on the east a potential boundary was indicated, that is to say, it could be drawn to extend indefinitely to make contact with the Portuguese possessions. It must be pointed out that this potential limit was assigned solely to the Audiencia de Quito and was lacking in the case of the 'Audiencia de Santa Fe' and those of Lima and Charcas.

The 'Real Audiencia de Quito' would depend, according to this de-

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cree, upon the Viceroy of Peru.

The Marañon or Amazon River with its most important tributaries was entirely within the boundaries of the 'Real Audiencia de Quito;' and it could scarcely be otherwise, since originally the river was called 'rio de Orellana' or 'rio de San Francisco de Quito.'

The words 'provinces not yet pacified nor discovered' which grant to the 'Audiencia de Quito' ill-defined boundaries in the east, stimulated the eager explorer and colonizer. The Jesuit missionaries were the best civilizers of the savage tribes and established villages in the forest and even arrived close to the Portuguese possessions.

B.- Decree of 1717.

By the royal decree of 26 May, 1717, the Viceroyalty of New Granada was established and the 'Audiencia de Quito' was suppressed and its territory became part of the jurisdiction of the Viceroy of New Granada.

C.- Decree of 1722.

The Viceroyalty of New Granada was suppressed and the 'Audencia de Quito' came back to form part of the Viceroyalty of Peru.

D.- Decree of 1739.

The Viceroyalty of New Granada was reestablished with the same territories which had been assigned to it in the decree of 1717 creating it together with that which had recently passed to the control of the 'Real Audiencia de Quito.'

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E.- Decree of 1740.

By this decree the boundaries between the viceroyalties were as

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follows: Beginning at Tumbes, thence via the Andes Mountains, via the jurisdiction of Paita and Piura to the Marañon at South Latitude  $6^{\circ} 30'$  and the land therein, leaving to Peru the jurisdiction of Piura, Cajamarca, Moyobamba and Motilones; and via the mountains of Jeveros, crossing the Ucayali River at  $6^{\circ}$  of latitude South, to reach the Yavari or Jauri River, at the confluence of the Carpi; (following) the waters of this river to the Amazon and down this river to the westernmost mouth of the Caqueta or Yapura, where the boundary of Brazil begins.

This Royal Edict, in giving more precise boundaries to the Audiencia lopped off about 200,000 sq. km of territory from it, including a large part of the territories where missionary work had been done by the Jesuits, in Ucayalo and Huallaga.

F.- Decree of 1802.

This edict provided for cutting off from the Viceroyalty of Nueva Granada or Santa Fe, the governing <sup>general</sup> and/command of Maynas, with the villages of the government of Quijos, which were added to the Viceroyalty of Lima. Or else it was an ecclesiastical and military cutting off and not a territorial separation; therefore these territories continued to be dependent upon the Audiencia de Quito, since no demarcation of boundaries appears, such as was made in the other decrees.

It was this decree which gave rise to difficulties with Peru, which considered that the separation was territorial.

G.- The Period of Independence.

The 29 May, 1822, date when Ecuador joined Greater Colombia, brought its territory to its own, definite limits, territory which had been fixed in the decrees of 1563, 1739 and 1740 according to the "uti possidetis juris" of 1810.

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By the Republic of Colombia law for division of territory of 25 June 1824, Ecuador lost Buenaventura, Pasto, Cali, Buga, Popayan, Chapanchica and Guarchicona, which had belonged to the Presidency of Quito for about 300 years. These territories passed to Colombia.

The Peru-Gran Colombia War occurred in 1828. The Peruvians under command of General Lamar were put to flight by Marshal Antonion Jose de Sucre in the battle of Tarqui the 27 of February, 1829. As boundaries the same limits were indicated as held before the ancient viceroyalties of New Granada and Peru. The right of Ecuador to Jaen y Maynas was fully confirmed. In the protocol of Pedemonte-Mosquera, subscribed to in 1830 a line was fixed: Tumbes - Macara - Muancabamba - Maranon with the purpose of giving the two countries a natural boundary.

#### H.- Period of the Republic

Upon the separation of Ecuador from Gran Colombia, in 1830, the territory of Ecuador was recognized by the treaty of Guayaquil of 1829 and by its Protocol of Execution at Pedemonte-Mosquera.

On the 12 July 1832 the treaty of Pando-Noboa was signed; it re-existed and respected the boundaries.

During more than 100 years from that time, a long diplomatic battle was joined between Ecuador and Peru over boundaries and also several military encounters in the East, such as the one at Angoteros (Rio Napo) in 1903 and at Torres Causana (Rio Aguarico) in 1904; and a coastal invasion in force in 1859.

On 2 May 1890 the Herrera-Garcia treaty was signed in which an effort was made to solve the boundary problem by means of a direct settlement. The Peruvian Congress did not approve the plan and there predom-

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inated in the Congress a completely negative attitude on letting Ecuador have any free access to the Amazon whatever, as by the Pastaza, Morona and Santiago Rivers, as determined in the treaty.

With the Herrera-Garcia treaty broken, mediation by the King of Spain was resorted to. This, too, broke down in 1910 (Espinoza-Bonifaz Convention).

On the 15 of July 1916 the Munoz Veruaza-Suarez treaty was signed between Ecuador and Colombia. By it Ecuador lost her land contacts with Brazil, and Colombia was able to negotiate directly with Peru on a route to the Amazon.

The 21 June 1924 the Protocol Ponce-Castro Oyanguren was signed between Peru and Ecuador establishing direct negotiation and mediation. The mediator was the President of the U.S.A. The negotiations broke down with the withdrawal of the Peruvian delegation from Washington in August 1938.

III. The Protocol of Rio de JaneiroA.- Peruvian Invasion in 1941.

On the 23 July 1941 Peru invaded the Ecuadorian provinces of El Oro, Loja and Oriente with a heavily-armed force, routing the meager forces on the frontier of Ecuador. By the first of August they had

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occupied the villages of Arenillas, Santa Rosa, Puerto Bolivar and Machala and all of the military garrisons of the Eastern zone (Selva).

Hostilities were suspended through the intervention of friendly countries: the U.S.A., Argentina, Chile and Brazil.

B.- The Protocol of Rio de Janeiro (29-1-1942)



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"Protocol of Peace, Friendship and Boundaries between Ecuador and Peru."

The Governments of Ecuador and Peru, desiring to provide a solution to the question of boundaries, which has been separating them for a long time and giving consideration to the offer of the Governments of the United States of America, of the Republic of Argentina, and of the United States of Brazil and of Chile, of their <sup>friendly</sup> services to obtain a prompt and honorable solution of the problem, and moved by the American spirit which prevails in the Third Consultative Assembly of Ministers of Foreign Relations of the American Republics, have resolved to proclaim a protocol of peace, friendship and boundaries in the presence of the representatives of these four friendly governments. To this end the following plenipotentiaries take part:

For the Republic of Ecuador, Dr. Julio Tobar Donoso, Minister of Foreign Relations; and for the Republic of Peru, Dr. Alfredo Solf y Muro, Minister of Foreign Relations, both of whom, after showing their respective credentials in good and true form, subscribe their names to the following Protocol:

## Article I.

The Governments of Ecuador and Peru solemnly declare their firm resolve to maintain relations of peace and friendship between the two peoples and also relations of understanding and good will, and to abstain in all respects from whatever act might be capable of disturbing these relations.

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Article II.

The Government of Peru will retire, within the period of fifteen days from date, its military forces from the line described in Article VIII of this Protocol.

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Article III

The United States of America, Argentina, Brazil and Chile will cooperate by means of military observers, for the purpose of adapting to the circumstances the removing and withdrawing of troops mentioned in the preceding article.

Article IV.

The military forces of the two countries will remain in their new positions until the definitive demarcation of the frontier line. Until then, Ecuador will have sole jurisdiction in civil matters in the zones which Peru will withdraw from, in order that the zone demilitarized under the Acta de Talara may remain in the same conditions.

Article V.

The measures to be taken by the United States, Argentina, Brazil and Chile will continue until the definitive demarcation of the frontiers between Ecuador and Peru has been made, thus keeping this Protocol and its execution under the guaranty of the Four Powers mentioned at the beginning of this Article.

Article VI.

For navigation on the Amazon and its northern tributaries, Ecuador will enjoy the same concessions which Brazil and Colombia enjoy and in addition those which were agreed upon in a Treaty of Commerce and Navigation intended to facilitate free and open

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navigation in the rivers referred to.

## Article VIII. (Article VII. See below.)

The (new) frontier will be anchored at the following points:

A) In the West:

1. Mouth of the Capones in the ocean
2. Zarumilla River and Balsamal or Lajas Ravine
3. Puyango or Tumbez River, up to the Cazaderos ravine
4. Cazaderos
5. Ravine of Pilares and of the Alamor to the Chira River
6. Chira River, upper reaches
7. Macara, Calvas and Espindola Rivers, upper reaches, to the head (source) of the last-named to the junction of Sabanillas
8. Junction of Sabanillas to the Canchis River
9. Canchis River along whole course of its upper reaches
10. Lower reaches of the Chinchipe River to the point where it receives the San Francisco River.

Article VII.

Whatever doubt or understanding arises concerning the execution of this Protocol is to be resolved by the Parties concerned with the concurrence of the representatives of the United States, Argentina, Brazil and Chile with the briefest possible delay.

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#### Article IX.

It is understood that the boundary line described above will be accepted by Ecuador and Peru through the fixing, by technicians, of the frontier, on the ground, between the two countries. The parties will, however, be able, in the course of tracing the (demarcation line) on the ground, to agree on reciprocal concessions which they consider suitable in order to adjust the line to geographic realities. These corrections will be carried out with the cooperation of the representatives of the United States of America, the Republic of Argentina, Brazil and Chile.

The Governments of Ecuador and Peru will submit the present Protocol to their respective Congresses with the obligation of obtaining their ratification with no more than 30 days' delay.

In witness whereof, the Plenipotentiaries above mentioned sign and seal this Protocol in two copies in Spanish in the city of Rio de Janeiro at one o'clock of the 29th of January 1942, under the auspices of His Excellency the President of Brazil in the presence of the Hon. Ministers of Foreign Relations of the Republic of Argentina, Brazil and Chile and the Under Secretary of State of the United States of America. (Signed): J. Toñar Donoso - Alfredo Sol y Muro - E. Ruiz Guinazu - Oswaldo Aranha - Juan B. Rossetti - Sumner Welles.

#### C.- Conclusions:

The Protocol of Rio de Janeiro has been the mainspring for permanent diplomatic tension between Ecuador and Peru, because of the fact that the Mixed Commissions of Demarcation has been unable to remove it, as a result of difficulties which have arisen in two sec-

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tors:

a) Sector of the Lagartococha River (in the N.E. of Ecuador), in the upper reaches, arising apparently from the two principal ravines, one of them in the west and deeply imbedded in Ecuadorian territory, and the other, in the north, likewise called Quebrada de Zancudo or de Lagartococha, thus coming near to Guepi.

The Peruvian side then asserted that the sources of the Lagartococha, in accord with the demarcation, ought to extend via the western ravine, or Yurac-Yacu, and not via the ravine of Zancudo of the north.

The truth was that there was an area of about 80 sq. km between the two ravines, area which the Peruvian side came to convert, with its interpretation, into an area to be discussed.

The Protocol of Rio de Janeiro had of course provided, in Article VIII, that doubts about carrying it out would be resolved with the concurrence of the mediating nations.

In accord with a suggestion from Brazil, a technician was named, a Captain in the navy, Diaz de Aguiar, a Brazilian, in 1945. He passed judgment that it was the ravine in the north or that of Zancudo, which should be recognized as boundary, and not the western one, as Peru claimed. With this decision Ecuador lost some 200 sq. km.

In the year 1947 Peru obtained the decision of the same Captain revising the original decision, alleging better acquaintance with the terrain. Ecuador did not accept this inconsistency and the problem continues to hang fire today. By accepting it, Ecuador would lose 80 sq. km more.

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b) The other controversial point arose over a supposed watershed between the Zamora and Santiago Rivers, (in the S.E. of Ecuador).

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Thanks to a better knowledge of the region, it was discovered that properly speaking <sup>such</sup> no/watershed existed, the <sup>dry</sup> territory between the two rivers was instead another hydrographic system, the Cenepa River with its tributaries, which had not been known earlier in all its extent and importance.

This Cenepa River, some 190 km in length, has its source in the Ecuadorian mountains of the Condor, and empties into the Marañon.

In the face of this geographic reality, the placing of the milestones indicated in the Protocol of Rio de Janeiro for this section had to be held in suspense. The Government of Ecuador insisted, thereupon, that a new adjustment was an unavoidable necessity, and invoked for that purpose the meeting provided among the participating countries.

Up to the present Peru has not yet come to such an adjustment and considers that the watershed between the Zamora and the Santiago does exist, although above the source of the Cenepa.